IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No.05-cv-329-GKF(SAJ)**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

RESPONSE OF STATE OF OKLAHOMA TO
MOTION TO COMPEL DISCOVERY
OF CAL-MAINE FOODS, INC.

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, ("the State"), and submits this response to the Motion to Compel Discovery filed by Defendant Cal-Maine Foods, Inc. ("Defendant Cal-Maine") [DKT # 1221].

I. Introduction

Defendant Cal-Maine's motion goes to great lengths to bother the Court with issues entirely irrelevant in this litigation. In particular, in its motion, Defendant Cal-Maine takes issue with the State's responses to five interrogatories (Nos. 1, 2, 7, 8 & 9) and five corresponding requests for production of documents (Nos. 1, 2, 5, 6 & 7). In doing so, Defendant Cal-Maine asserts three basic deficiencies in the State's responses to its discovery requests.

First, Defendant Cal-Maine asserts that the State's discovery responses pertaining to evidence of statutory and regulatory violations are somehow deficient, despite the fact that the State provides over three pages of narrative, complete with references to documents, that explain

the basis of its claims against Defendant Cal-Maine. *See* Ex. 1 (State's interrogatory responses 1 & 2).

Second, Defendant Cal-Maine asserts that the State's discovery response pertaining to Arkansas's compliance (or lack thereof) with its obligations under the Arkansas River Basin Compact is deficient, despite the fact that this issue is utterly irrelevant to any claim or defense in this lawsuit. *See* Ex. 2 (State's interrogatory response 7).

Third, and finally, Defendant Cal-Maine asserts that the State's discovery responses pertaining to whether the State made any pre-filing evaluation of the economic or social effects of its lawsuit are deficient, despite the fact that these issues are irrelevant and improper. *See* Ex. 2 (State's interrogatory responses 8 & 9).

None of these arguments by Defendant Cal-Maine are justified, and the motion to compel should be denied in its entirety.[1]

II. Argument

A. Responses and objections to Interrogatories 1 and 2 and Requests for Production 1 and 2 are proper.

Interrogatories 1 and 2 are contention interrogatories, requiring a proper understanding of the State's contentions. Contrary to Defendant Cal-Maine's assertion, Interrogatory No. 1 does not ask the State simply "to specify the who, where, when and how regarding the plaintiff's allegations that Defendant Cal-Maine's former independent contract growers . . . violated

[1] Any suggestion or implication that the State was non-responsive to Defendant Cal-Maine's effort to discuss the issues raised in this motion to compel should not be credited. On or about June 1, 2007, Defendant Cal-Maine wrote to the State to meet-and-confer about the State's responses. At about this same time, the State had written to Defendant Cal-Maine to meet-and-confer about deficiencies in its responses to the State's April 20, 2007 requests for admissions. Rather than engage in a further exchange of letters on these matters, the State, on June 20, 2007, proposed a meet-and-confer to discuss both sides' discovery issues. *See* Ex. 3. That meet-and-confer occurred on June 27, 2007.

Oklahoma and Arkansas law." *See* Cal-Maine Motion, p. 5. To the contrary, Interrogatory No. 1 actually focuses on the State's contention about contract growers and inquires "If You [the State] contend that any of the Former Cal-Maine Contract growers ever" stored or applied litter contrary to Oklahoma or Arkansas law, identify the grower, and for each "specify the state, place, and nature of the storage or application event(s) and identify the statutes(s) and/or regulation(s) which you contend was/were violated." (Emphasis added.)

The point of this interrogatory is plainly the contention of the State about the conduct of the contract growers. However, the State's contentions are directed at the Poultry Integrator Defendants themselves, including Defendant Cal-Maine.[2] Defendant Cal-Maine, like the other

[2] The fact of the matter is that Cal-Maine is responsible as a matter of law for the poultry waste generated by the growing operations for the known or foreseeable contract activities of its growers. As set forth in Restatement (Second) Torts § 427B ("Work Likely To Involve Trespass Or Nuisance"):

> One who employs an independent contractor to do work which the employer knows or has reason to know to be likely to involve a trespass upon the land of another or the creation of a public or a private nuisance, is subject to liability for harm resulting to others from such trespass or nuisance.

As explained in Comment b to Restatement § 427B:

> This exception applies to work which involves a trespass on the land of another, or either a public or a private nuisance. It applies in particular where the contractor is directed or authorized by the employer to commit such a trespass, or to create such a nuisance, and where the trespass or nuisance is a necessary result of doing the work, as where the construction of a dam will necessarily flood other land. It is not, however, necessary to the application of the rule that the trespass or nuisance be directed or authorized, or that it shall necessarily follow from the work. It is sufficient that the employer has reason to recognize that, in the ordinary course of doing the work in the usual or prescribed manner, the trespass or nuisance is likely to result.

See, e.g., Tankersley v. Webster, 243 P. 745, 747 (Okla. 1925) ("'. . . where the performance of [a] contract, in the ordinary mode of doing the work necessarily or naturally results in producing the . . . nuisance which caused the injury, then the employer is subject to the same liability to the injured party as the contractor'"). Notably, in *City of Tulsa v. Tyson Foods, Inc.*, 258 F.Supp.2d

Poultry Integrator Defendants, tries to hide behind its contract growers and force the State to prove the extent of the massive pollution of the Illinois River Watershed by proving the particulars of each individual load of poultry waste which has been spread upon the land, resulting in runoff and the pollution of these waters. The State, however, is not required to prove the time and place of every release. Simply put, the State's objections and responses are proper, and not evasive or incomplete. Defendant Cal-Maine's frustration with them stems from its attempt to force the State to prove its case in a manner that Defendant Cal-Maine wants, as opposed to the manner in which the State intends (and is allowed under the law).

The State responded to Interrogatory Nos. 1 and 2 by noting that it does not, and need not, rely for evidence of its case on directly documenting each individual statutory violation. *See* Ex. 1 (State's interrogatory responses 1 & 2). In keeping with the spirit of the Court's May 17, 2007 Order, p. 9 [DKT # 1150], the State, in its three-page response, explained its circumstantial

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1263, 1296-97 (N.D. Okla. 2003), *subsequently vacated in connection with settlement*, the Court concluded that Restatement § 427B applied to a similar factual scenario, reasoning:

> Poultry waste "necessarily follows" from the "growing" of poultry. Although Poultry Defendants cite other sources of phosphorus in the Watershed, they admit in their response brief that they were aware in the 1990s that "phosphorus presented potential problems to the Watershed" and, therefore, attempted to address the problem by educating their growers regarding better litter management. Given these admissions, the Court finds Poultry Defendants had "reason to recognize that, in the ordinary course of [the growers] doing the work in the usual or prescribed manner, the trespass or nuisance is likely to result." As the Court concludes that the § 427B exception applies herein, the factual questions regarding the Poultry Defendants' degree of control over their growers need not be addressed at the jury trial. Accordingly, the Court grants plaintiffs' motion for partial summary judgment on the issue of the Poultry Defendants' vicarious liability for any trespass or nuisance created by their growers because they were aware that in the ordinary course of doing the contract work, a trespass or nuisance was likely to result.

(Citations omitted.)

evidence with as much particularity as possible. It further noted it had already produced particularized sampling data, and will continue to provide additional data as it is developed. The State also responded that, in those circumstances in which it determined to rely on direct evidence of the release of waste at specific times and places, it would supplement its response with the specific direct evidence it would use.

In its response the State also gave a detailed explanation of how it would prove its case through expert testimony based on scientific literature and the evaluation of sampling and analysis data collected by the State. *See* Ex. 1 (State's interrogatory responses 1 & 2). These experts will demonstrate that land application of the Poultry Integrator Defendants' poultry waste within the Illinois River Watershed releases contaminants into the environment and causes pollution.

Defendant Cal-Maine mischaracterizes the State's response by suggesting the State has said it "will not rely on proof of statutory violations to prove liability and damages." Cal-Maine Motion, p. 6. The State has not said this, but has said that it will not prove statutory violations in the way Defendant Cal-Maine and the other Poultry Integrator Defendants want the State to. The State is not proving its case by establishing the time and place of every release. It is time for the Poultry Integrator Defendants to stop making the incorrect assertion that the State must prove its case in the most cumbersome and difficult fashion, and that if it does not do so it has no case at all. The fact of the matter is that the liability of the Poultry Integrator Defendants, including Defendant Cal-Maine, may be established circumstantially. *See, e.g., Tosco Corp. v. Koch Industries*, 216 F.3d 886, 892 (10th Cir. 2000) ("CERCLA liability may be inferred from the totality of the circumstances; it need not be proven by direct evidence"); *Ohio Oil Co. v. Elliott*, 254 F.2d 832, 834 (10th Cir. 1958) (violation of Oklahoma environmental statute "may be

proved by circumstantial as well as by positive or direct evidence and it is not necessary that the proof rise to that degree of certainty which will exclude every other reasonable conclusion than the one arrived at by the jury"); *King v. State*, 109 P.2d 836, 838 (Okla. Crim. App. 1941) ("It has been held by this court that proof of a public nuisance could be proved by circumstantial evidence").

The State's case, as indicated, will be proven in part circumstantially, and will demonstrate joint and several liability of the Poultry Integrator Defendants. The State made clear it is suing not the growers, but rather the Poultry Integrator Defendants, and gave Defendant Cal-Maine the principal and material facts supporting its allegations against it. This is a proper response to Interrogatory No. 2, as well as an explanation of why it is not suing the contract growers in response to Interrogatory No. 1.

The State's responses to Requests for Production Nos. 1 and 2, which spring from Interrogatory Nos. 1 and 2, were also proper. Those requests asked for all documents or material which demonstrate the storage or application events specified in the interrogatories occurred, thus repeating the conceptual error of the interrogatories. The State incorporated its objections to the interrogatories and identified responsive information, including documents yet to be produced at ODAFF, which would contain information the State had about Defendant Cal-Maine's growers and their land application or storage of waste. Notably, when the State provided the opportunity for all Defendants to inspect documents on-site at ODAFF on July 18-19, 2007, including those documents which were referenced in the responses to Requests for Production Nos. 1 and 2, no one from Defendant Cal-Maine attended. These ODAFF files produced on July 18-19, 2007, were produced as they are kept in the usual course of business,

which is alphabetically by grower name. As a result, Defendant Cal-Maine could have readily located its own growers' information had it elected to attend the ODAFF document production.

The Court should not compel any further response with respect to this discovery.

B. Objections about Arkansas's compliance with the Arkansas River Compact are proper (Interrogatory No. 7 and Request for Production No. 5).

Interrogatory No. 7 asks about the Arkansas River Basin Compact and the Arkansas River Basin Compact Commission, both of which are entirely irrelevant to this lawsuit:

> If you believe that the State of Arkansas has failed in any respect to fulfill any obligation it has or has ever had under the Arkansas River Basin Compact, or that Arkansas has failed to fulfill any obligation imposed by the Arkansas-Oklahoma Arkansas River Compact Commission, identify each such obligation and failure, and explain the actions(s) or inaction(s) by Arkansas that you believe constitute each such failure. If you do not believe that any such failures have occurred, please say so plainly.

See Cargill Motion, Ex. A. Because the Compact and its Commission are irrelevant to this lawsuit, the State has made no contentions about the performance of Arkansas's obligations under the Compact and its Commission in this lawsuit.

The Compact deals with allocation of water within the Arkansas River basin, and, to a very limited degree, with environmental protection. The State's case is about the failures of the named Poultry Integrator Defendants to properly manage and dispose of the waste created by their birds, not about the actions of Arkansas. Arkansas's conduct under the Compact forms no part of the State's claims, or any legitimate defense of Defendant Cal-Maine, and is irrelevant.

Defendant Cal-Maine's assertions of relevance are specious. First, Defendant Cal-Maine asserts that Arkansas's fulfillment or non-fulfillment of its obligations is relevant to its defense that the State has failed to join a necessary party, without even hinting how Arkansas is a necessary party to this action. The absence of Arkansas as a party in no way prevents complete relief from being accorded among the existing parties. The State's case is not against its

neighbor Arkansas; it is against polluters who operate both in Oklahoma and Arkansas. Moreover, the Court has already denied Arkansas's request to intervene in this case. *See* DKT #1141. Thus, Arkansas is not a necessary party and its absence does not impede Defendant Cal-Maine's ability to defend itself or subject it to inconsistent claims.

Next, Defendant Cal-Maine claims that the State's allegations are "barred" by the Compact or that the Compact Commission has primary jurisdiction over the State's claims. Cal-Maine Motion, p. 8. Issues pertaining to the Compact and its Commision were extensively briefed and argued, and the Court has already ruled that the Compact does not preempt the State's claims. *See* DKT #1186 & 1187. Neither does the Compact give the Compact Commission primary jurisdiction over those claims. In fact, by its very terms, in the Compact, Oklahoma and Arkansas agree to "[u]tilize the provisions of all federal and state water pollution laws and to recognize such water quality standards as may be now or hereafter established under the Federal Water Pollution Control Act in the resolution of any pollution problems affecting the waters of the Arkansas River Basin." 82 Okla. Stat. § 1421, Art. VII(E). The Commission, therefore, does not exercise primary jurisdiction over issues regarding the quality of water, but instead allows the parties to it to use the applicable laws to resolve interstate water pollution problems.

Thus, there is no sense in which Arkansas's fulfillment of its Compact obligations, or the State's belief about that fulfillment, makes any fact of consequence to the determination of this action more or less probable. The requested information is irrelevant and not calculated to lead to the discovery of admissible evidence.

Further, the investigation necessary to determine if Arkansas has lived up to its obligations would be overly burdensome and pointless, another valid basis for objection to this

Interrogatory. Consequently, Request for Production No. 5, which asked the State to produce all documents or other materials reflecting or explaining Arkansas's failures to live up to its Compact obligations is subject to the same objections, which the State asserted.

C. Discovery into whether the State made any pre-filing evaluation of the economic or social effects of this lawsuit is irrelevant.

Finally, Interrogatories 8 and 9 also seek irrelevant information. In these interrogatories, Defendant Cal-Maine has sought discovery into (1) whether the State made any pre-filing evaluation "of any potential adverse social or financial consequences that could be suffered by family farmers who are contract growers for any of the defendants if [the State is] successful in any aspect of this litigation" and (2) whether the State made any pre-filing evaluation "of any potential adverse consequences to the economy of Oklahoma or the economy of Arkansas that could be suffered if [the State is] successful in any aspect of this litigation." *See* Cal-Maine Motion, Ex. A (Interrogatories 8 & 9).

Defendant Cal-Maine advances two conclusory grounds in support of the relevancy of this sought-after discovery, both of which turn on the State's injunctive remedy. First, on page 3 of its motion, Defendant Cal-Maine contends that this discovery is "relevant to the balancing of the equities which must be made in evaluating the plaintiff's demand for injunctive relief contained in the FAC." And second, on page 10 of its motion, Defendant Cal-Maine contends that this discovery is relevant to the public interest prong of the injunction relief analysis. Defendant Cal-Maine is, however, mistaken as to both of its contentions of relevancy.

A party seeking a permanent injunction must show, as a general rule, the following: "(1) actual success on the merits; (2) irreparable harm unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest." *See Prairie Band*

Potawatomi Nation v. Wagnon, 476 F.3d 818, 822 (10th Cir. 2007) (quoting *Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175, 1180 (10th Cir. 2003)). In certain situations, such as the one here, however, not all of these elements are relevant.

For instance, with respect to the balancing of the equities -- element 3 -- the court in *Environmental Defense Fund, Inc. v. Lamphier*, 714 F.2d 331, 337-38 (4th Cir. 1983), explained that "the law of injunctions differs with respect to governmental plaintiffs (or private attorneys general) as opposed to private individuals. Where the plaintiff is a sovereign and where the activity may endanger the public health, 'injunctive relief is proper, without resort to balancing.' *Illinois v. Milwaukee*, 599 F.2d 151, 166 (7th Cir.1979), *rev'd on other grounds*, 451 U.S. 304, 101 S.Ct. 1784, 68 L.Ed.2d 114 (1981)." (Emphasis added); *see also EPA v. Environmental Waste Control, Inc.*, 917 F.2d 327, 332 (7th Cir. 1990) (same); *United States v. Bethlehem Steel Corp.*, 38 F.3d 862, 868 (7th Cir. 1994) (same); *United States v. Marine Shale Processors*, 81 F.3d 1329, 1359 (5th Cir. 1996) ("when the United States or a sovereign state sues in its capacity as protector of the public interest, a court may rest an injunction entirely upon a determination that the activity at issue constitutes a risk of danger to the public"). The Second Amended Complaint clearly alleges a public endangerment. *See, e.g.*, SAC, ¶¶ 63, 94, 99, 111-12.

Balancing is also unnecessary where, as here, the conduct has been willful. *See, e.g.*, SAC, ¶¶ 47-54, 56, 57, 101, 114.[3] As explained in *Marine Shale Processors*, 81 F.3d at 1358-59:

> [A] court need not balance the hardship when a defendant's conduct has been willful. *United States v. Pozsgai*, 999 F.2d 719, 736 (3d Cir.1993), *cert. denied*,

[3] The standard for willfulness is not high. For example, under Restatement (Second) of Torts § 825 "[a]n invasion of another's interest in the use and enjoyment of land or an interference with the public right, is intentional if the actor (a) acts for the purpose of causing it, or (b) knows that it is resulting or is substantially certain to result from his conduct."

> 510 U.S. 1110, 114 S.Ct. 1052, 127 L.Ed.2d 373 (1994); *U.S. EPA v. Environmental Waste Control, Inc.*, 917 F.2d 327, 332 (7th Cir.1990), *cert. denied*, 499 U.S. 975, 111 S.Ct. 1621, 113 L.Ed.2d 719 (1991). This doctrine evolved in part from cases involving willful encroachments onto neighboring real estate, *see, e.g.*, 5 John N. Pomeroy & John N. Pomeroy, Jr., *Pomeroy's Equity Jurisprudence* § 1922, at 4362-64 (2d ed. 1919), and it remains good law today in a variety of contexts.

See also Environmental Waste Control, Inc., 917 F.2d at 332 ("a court does not have to balance the equities in a case where the defendant's conduct has been willful").

Moreover, in any event, the balancing of the equities element weighs "the harm that the injunction may cause the opposing party." *See Prairie Band Potawatomi Nation*, 476 F.3d at 822 (emphasis added.) Defendant Cal-Maine's discovery, however, inquires only as to any adverse consequences that might be suffered by "family farmers who are contract growers for any of the defendants" or by "the economy of Oklahoma or the economy of Arkansas." *See* Cal-Maine Motion, Ex. A (Interrogatories 8 & 9). Neither the contract growers nor Arkansas have been named as "opposing parties" to this litigation.[4] Thus, Defendant Cal-Maine is simply wrong as a matter of law when it conclusorily argues that "[i]ssues regarding the relative harm to independent contract growers and the economies of Oklahoma and Arkansas are clearly important factors in any consideration of a request for injunctive relief." *See* Cal-Maine Motion, p. 9 (emphasis added).

In sum, given that the balancing of the equities element of the injunctive relief standard is irrelevant under the facts of this case, Defendant Cal-Maine is incorrect that this factor provides a basis for discovery of the sought-after information.

Defendant Cal-Maine's conclusory contention that its discovery is relevant to the public interest element of the injunction relief analysis is similarly unavailing. "When the government

[4] In fact, as noted above, this Court denied the State of Arkansas's motion to intervene in this action. *See* DKT #1141.

acts to enforce a statute or make effective a declared policy of the legislature, a standard of the public interest and the requirements of the private litigation measure the propriety and need for injunctive relief." 43A *Corpus Juris Secundum*, Injunctions, § 87 (2004). "The public interest may be declared in the form of a statute." 11A *Federal Practice and Procedure*, § 2948.4 (1995).

That is precisely the case here. The public interest has been declared by statute, and its declaration is clear. As explained in 27A Okla. Stat. 2-6-102:

> Whereas the pollution of the waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution of this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses . . . .

See also 82 Okla. Stat. § 1084.1[5] Protecting the public health and the environment from the dangers posed by run-off of poultry waste is indisputably in the public interest.[6] Where the legislature has spoken, it is inappropriate to second-guess or weigh its public policy determination. Yet, the effect of Defendant Cal-Maine's discovery is apparently to do just that.

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[5] *See also* 42 U.S.C. § 6901(b)(2) ("The Congress finds with respect to the environment and health - . . . (2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment").

[6] Caselaw confirms the public policy of protecting the public health and the environment from pollution. *In re Methyl Tertiary Butyl Ether Products Liability Litigation*, 175 F.Supp.2d 593, 629 (S.D.N.Y. 2001) ("It is beyond cavil that the public has a right to soil and water that is free from environmental contamination"); *United States v. Power Engineering Co.*, 10 F.Supp.2d 1145, 1165 (D. Colo. 1998) (". . . citizens have a right to expect contamination-free groundwater and soils, [and] a clean river . . . ."). Simply put, "[t]here is a strong public interest in protecting public health and our environment." *Industrial Park Development Co. v. EPA*, 604 F.Supp. 1136, 1144 (E.D. Pa. 1985).

Simply put, discovery into matters that fall outside the bounds of the articulated public policy is plainly irrelevant and inappropriate.

Further, even assuming *arguendo* that discovery were permissible to rebut the articulated public policy, some sort of showing would have to be made to call the public policy into question before such discovery could be considered relevant. Against the backdrop concerning the public interest presented above, the relevancy of Defendant Cal-Maine's discovery is not all apparent on its face. "[W]hen the request is overly broad on its face or when relevancy is not readily apparent, the party seeking the discovery has the burden to show the relevancy of the request." *Azimia v. United Parcel Service, Inc.*, 2007 WL 2010937, *2 (D. Kan. July 9, 2007) (citation omitted). Beyond a conclusory reference to the legal standard for injunction, Defendant Cal-Maine has not -- as is its burden -- offered any basis or analysis in its motion for the need for such discovery. Defendant Cal-Maine's interrogatories have all the hallmarks of a fishing expedition. Having utterly failed to carry its burden of demonstrating relevancy, Defendant Cal-Maine's motion to compel the discovery of this information must fail.

Defendant Cal-Maine's discovery requests also run afoul of the rule that appeals to the effects of a judgment on third persons are improper. For example and by way of analogy, appeals to the self-interest of jurors as taxpayers are improper in a civil case. *See, e.g.*, 75A *American Jurisprudence, Second Edition*, Trial, § 676. Given that such appeals are improper, discovery relating to the effect of a judgment in favor of the State on Defendants' contract growers and the economies of Oklahoma and Arkansas is similarly improper.

Finally, with respect to both interrogatories, Defendant Cal-Maine takes issue with the State's objection to the phrase "estimate, assessment, or quantification" as being vague and ambiguous. It is unclear from the phrase "estimate, assessment, or quantification" whether

Defendant Cal-Maine is inquiring as to existence of a formal study or investigation by the State or merely an informal discussion of the issue by the State. The State should not be required to guess as to which Defendant Cal-Maine means. The State's objection on grounds of vagueness and ambiguity is therefore justified and should be sustained.[7]

III. Conclusion

WHEREFORE, for the reasons stated above, Defendant Cal-Maine's motion to compel [DKT #1221] should be denied in its entirety.

Respectfully Submitted,

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[7] Defendant Cal-Maine's motion to compel discovery under the requests for production that parallel these interrogatories are irrelevant and improper for the same reasons stated herein, and therefore this aspect of the motion should be denied as well.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 2007, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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